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State of Utah

DEPARTMENT OF NATURAL RESOURCES Division of Water Rights

MICHAEL R. STYLER
Executive Director

JERRY D. OLDS
State Engineer/Division Director

STATE OF UTAH DIVISION OF WATER RIGHTS

DIVISION OF WATER RIGHTS,
JERRY D. OLDS
STATE ENGINEER,

Claimant

v.
WES TINGEY
Woodruff Irrigation Company
PO BOX 520
Woodruff UT 84086

Respondent.

CONTROL STRUCTURE NOTICE

No. SEAA 1198

TO: Woodruff Irrigation Company c/o Wes Tingey

Ronald Hoffman, water commissioner, has indicated he is unable to regulate and measure the flows at your diversion because (1) the splitter structure is inaccessible due to the lack of an adequate walkway, (2) the splitter doesn't move adequately as intended, and (3) staff gages have been damaged/removed by ice. A water users responsibility and the State Engineer's authority regarding headgates and measuring devices is as follows according to Section 73-5-4 of the Utah Code Annotated, 1953 as amended:

To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, each person using water in this state shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and
- (b) any other location required by the state engineer.

Each person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

The state engineer shall approve the design of:

- (a) the measuring device; and
- (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.

SCANNED

If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and
- (b) commence enforcement proceedings authorized by Section 73-2-25 .

Therefore, you are hereby notified that improvements are to be made to your splitter structure that include a safe and adequate walkway, a splitter that can be adjusted as needed, and staff gages at each side of the structure. These improvements must be completed prior to the beginning of irrigation season this year unless you work with the commissioner to agree upon a later time frame and he notifies us in writing of the established deadline.

We would recommend that you work with the commissioner to determine the type of walkway that would be adequate on the Woodruff Irrigation Company splitter control structure.

The splitter structure will be inspected for compliance. If it is not in compliance, a Distribution Order will be issued from the State Engineer forbidding the use of water until such time as the necessary improvements are made. The commissioner will be instructed to tag, close, and lock the applicable diversion.

Diverting water through the tagged head gate(s) prior to making the needed improvements to the splitter structure and without the consent of the State Engineer will be a direct violation of the distribution order and any party taking such action will be subject to enforcement actions including the assessment of fines, penalties, and other requirements. Enforcement action is authorized in this case under UTAH CODE ANN. § 73-2-25 (2)(a)(v).


If enforcement action is initiated, administrative fines may be assessed in amounts up to \$1,000 per day for an "unknowing" violation or up to \$5,000 per day for a "knowing" violation, each day of the unlawful activity constituting a separate violation. In addition, a violator may be required to replace up to 200% of the water unlawfully diverted and may be required to reimburse the Division for expenses incurred in investigating and stopping the unlawful activity.

Please be aware that you are responsible for complying with the law and that there are possible administrative, civil and criminal penalties for failing to do so. (UTAH CODE ANN. §§ 73-2-26, 27 and 28; UTAH ADMIN. CODE R. 655-14-12.) This letter does not limit or preclude the Division from pursuing any lawful enforcement options.

Further, if a distribution order is issued, no administrative action will be taken on the affected water right(s) as long as the order remains in force. Change applications, segregation applications, etc., will be received for filing by the Division of Water Rights, but no further action will be taken to process such filings until the delinquent accounts have been settled.

Thank you for your cooperation in attending to this matter in a timely manner. If you have any questions concerning this notice, please contact me by phone at 801-538-7380 or by e-mail at LeeSim@Utah.Gov or Bob Fotheringham, Regional Engineer, by phone at (435) 752-8755 or by e-mail at BobFotheringham@utah.gov.

Dated this 7 day of March, 2007


for Lee H. Sim, P.E.
Assistant State Engineer

cc: Distribution File
Bob Fotheringham, Regional Engineer
Ronald Hoffman, Water Commissioner